U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: San Francisco Date: JAN 24 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT:

[redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Identifying data deleted to prevent clearly unwarranted

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for Terrance M. O'Reilly, Director
Administrative Appeals Office

PB

[redacted]

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected. The district director's decision under § 212(i) of the Act will be withdrawn and the matter will be remanded for further action.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in 1990. The applicant married a native of the Philippines and naturalized U.S. citizen in July 1997 and is the beneficiary of an approved immediate relative visa petition. The applicant seeks the above waiver in order to remain in the United States and reside with her spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that the Service did not apply the facts or the law to this case. Counsel states that the applicant clearly showed extreme hardship to her spouse who is elderly and relies on her for emotional, personal and economic reasons.

The district director determined that the applicant perpetrated fraud by misrepresenting her purpose upon entry into the United States. The Associate Commissioner fails to detect such fraud at the time of entry. The applicant was admitted on a nonimmigrant visa for a specific purpose, and she engaged in that specific purpose for a specific period of time. However, she overstayed her authorized period of admission and did not return to the Philippines with her employer.

The Department of State, in 9 FAM 40.63 n.4.8., has issued guidelines about invoking the ground of inadmissibility against aliens who seeks a tourist visa claiming a desire only to visit the United States, but who begin working shortly after they enter the country as nonimmigrants:

> (1) An alien who has obtained a visa or entry as a nonimmigrant and who within 30 days thereafter begins unauthorized employment in the U.S. is presumed to have misrepresented his or her intention in seeking a visa or entry.
>
> (2) Where this conduct occurs after 30 days but less than 60 days after the visa issuance or entry, no such presumption or misrepresentation arises, but the consul is authorized to submit to the Visa Office any additional pertinent facts that arouse in the consul a reasonable belief that the alien misrepresented his or her intent. In such cases, the alien must be given the opportunity to present countervailing evidence.

[redacted]

(3) Where the conduct is initiated more than 60 days after the visa issuance or entry the Visa Office will not entertain a recommendation that the alien be found ineligible on the basis of an alleged misrepresentation.

The record reflects that the applicant was issued a nonimmigrant B-1/B-2 visa as a domestic of [redacted] family for a four month stay in the United States. The applicant was admitted to the United States on August 7, 1990 based on that nonimmigrant visa. The applicant states that the family returned to the Philippines after one year but the applicant decided to stay in the United States. The applicant stated that she lived with Mrs. Hanson's relative until she met [redacted] got pregnant and gave birth to her daughter in 1994. The applicant states that she requested welfare assistance until she met her present husband and got married.

The record reflects that the applicant honored her commitment to the [redacted] family for more than the allotted 4 months as stipulated on the visa page in her passport. There is no evidence in the record to show that her decision to remain behind in the United States and not to accompany the [redacted] family back to the Philippines was initiated within 30 days of the issuance of her nonimmigrant visa or her admission into the United States. The record indicates that her decision was initiated well beyond 60 days of her date of admission. Therefore, the district director's finding of inadmissibility based on the applicant's alleged misrepresentation at the time of her admission is not supported in the record.

However, the applicant appears to have remained in the United States without Service authorization after April 1, 1997, and is unlawfully present. Therefore, she is inadmissible under § 212(a)(9)(B) of the Act, 8 U.S.C. 1182(a)(9)(B). The appeal will be rejected. The district director's decision under § 212(i) will be withdrawn, and the matter will be remanded to him to render a new decision on the application under § 212(a)(9)(B)(v) of the Act, 8 U.S.C. 1182(a)(9)(B)(v), relating to the inadmissibility of the applicant for being unlawfully present in the United States after April 1, 1997. If the decision is adverse to the applicant, it is to be certified to the Associate Commissioner for review.

ORDER: The appeal is rejected. The district director's decision under § 212(i) of the Act is withdrawn, and the matter is remanded to him for further action and the rendering of a new decision under § 212(a)(9)(B)(v) of the Act which, if adverse to the applicant is to be certified to the Associate Commissioner for review.